



The Attorney General of Texas

December 20, 1982

MARK WHITE
Attorney General

Supreme Court Building
P. O. Box 12548
Austin, TX. 78711-2548
512/475-2501
Telex 910/874-1367
Telecopier 512/475-0266

1607 Main St., Suite 1400
Dallas, TX. 75201-4709
214/742-8944

4824 Alberta Ave., Suite 160
El Paso, TX. 79905-2793
915/533-3484

1220 Dallas Ave., Suite 202
Houston, TX. 77002-6986
713/650-0666

806 Broadway, Suite 312
Lubbock, TX. 79401-3479
806/747-5238

4309 N. Tenth, Suite B
McAllen, TX. 78501-1685
512/682-4547

200 Main Plaza, Suite 400
San Antonio, TX. 78205-2797
512/225-4191

An Equal Opportunity/
Affirmative Action Employer

Ms. Analeslie Muncy
Dallas City Attorney
City Hall
Dallas, Texas 75201

Open Records Decision No. 324

Re: Whether names, addresses and blood test results of participants in voluntary lead screening program sponsored by city of Dallas are available under the Open Records Act

Dear Ms. Muncy:

You have requested an opinion under the Open Records Act, article 6252-17a, V.T.C.S., pursuant to receiving a request for information from the Dallas Morning News.

According to the facts you presented to us, city health department personnel, under the direction of a physician, the Lead Screening Coordinator, administered lead screening blood tests to approximately 12,000 persons residing within a two-mile area surrounding three lead processing companies. Residents of the area came to the clinics voluntarily, had venapuncture and fingertip blood samples drawn, and were asked to wait for results. Some test results required a second blood sample which was sent to a laboratory for additional testing.

Relative to physician supervision of the lead screening personnel, you stated:

Blood tests were administered... to lead testing participants pursuant to written instructions... issued by... [the] Lead Screening Coordinator. [Two physicians] rotated through the [c]ity lead testing clinics to provide on-going supervision, and [the Lead Screening Coordinator] administered blood tests whenever the clinics became particularly crowded.... Throughout the lead testing program, the physicians met informally with their staffers to monitor progress and problems.

The city of Dallas has already released copies of the lead blood test results to the requestor, with the names and addresses of the participants deleted.

The newspaper has requested the names, addresses, and associated test results of all the participants in the lead screening program. Your office claims an exception from disclosure under section 3(a)(1) of the Open Records Act, which excepts "information deemed confidential by law, either [C]onstitutional, statutory, or by judicial decision." You state that section 5.08(b) of the Medical Practice Act, article 4495b, V.T.C.S., provides that the information requested is confidential by law. That section reads:

Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

You state that the city of Dallas obtained consent from the persons tested, or from parents or guardians, to disclose the information to the Environmental Protection Agency or parties working with that agency on the study. The city has disclosed the information to the Environmental Protection Agency and parties working with that agency on the study.

We agree that this information is confidential. The record of blood tests taken by or under the supervision of a physician are "records... created... by a physician" pursuant to article 4495b, section 5.08(b), V.T.C.S. The word "patient" is also defined in that section. Section 5.08(m) states:

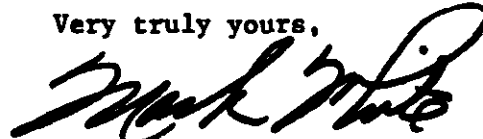
'Patient' for the purposes of this section means any person who consults or is seen by a person licensed to practice medicine to receive medical care.

It is clear that the persons tested were "seen by a person licensed to practice medicine." The phrase "medical care" is not defined in the Medical Practice Act. However, it can be ascertained that the legislature intended that "medical care" should include diagnosis. Section 5.08(b), quoted above, expressly extends confidentiality to records of "diagnosis, evaluation, or treatment." (Emphasis added). Legislative intent is determined from the statute as a whole. Citizens Bank of Bryan v. First State Bank, Heine, 580 S.W.2d 344 (Tex. 1979). Furthermore, our interpretation is consistent with the common law. See Statton v. Richardson, 387 S.W.2d 683 (Tex. Civ. App. - Amarillo 1965, no writ) (no cause of action against doctor for malpractice either in diagnosis or treatment unless negligence was

proximate cause of injury). The phrase "medical act," which has a connotation similar to "medical care," has been construed to include administering shots and taking blood tests. Gonzales v. Jacksonville General Hospital, Inc., 365 So.2d 800 (Fla. Dist. Ct. App. 1978) (nurse's act of administering shot was medical act); Berg v. New York Society for the Relief of the Ruptured and Crippled, 136 N.E.2d 523 (N.Y. 1956) (blood test by hospital technician was a medical act as necessary test for blood transfusion).

It is therefore our opinion that all the requirements for confidentiality have been met, and that the city is prohibited by article 4495b from disclosing the names and addresses of participants in the lead blood screening study without the participants' consent.

Very truly yours,



MARK WHITE

Attorney General of Texas

JOHN W. FAINTER, JR.
First Assistant Attorney General

RICHARD E. GRAY III
Executive Assistant Attorney General

Prepared by Patricia Hinojosa
Assistant Attorney General

APPROVED:
OPINION COMMITTEE

Susan L. Garrison, Chairman
Jon Bible
Rick Gilpin
Patricia Hinojosa
Jim Moellinger